**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.1136 OF 1990

Central Bank of India. ..Plaintiffs.

V/s.

M/s.T.N.Trading & Anr. ..Defendants.

Mr.Avinash Joshi i/b. Mulla & Mulla for Plaintiffs.

**CORAM: A.M.KHANWILKAR,J**

**DATE : OCTOBER 3, 2007.**

**P.C. :**

1. None appears for the Defendants though served. No Written Statement has been filed on behalf of the Defendants. Matter has been placed under caption "undefended suit" in terms of the Order dated 13th September, 2007. The Defendants have still not chosen to appear. In the circumstances, I am inclined to proceed in the matter in exercise of power under Order 8 Rule 10 of CPC.

2. In substance, the case of the Plaintiffs is that first Defendant-firm was engaged in carrying on business at Mumbai. The Second Defendant is the Karta of Govindji Hirji Hindu Undivided Family and is a partner and/or proprietor of the 1st Defendant firm. One Raghuvanshi Mills Ltd. were the constituents of the Plaintiffs, who were sanctioned

bills facility. The Defendants were acceptors of the said bill drawn by the said Raghuvanshi Mills Ltd.. The Bill of Exchange dated 28th February, 1987, whereunder the Defendants were liable to pay the Plaintiffs 60 days after the date at Mumbai the sum of Rs.1,45,351.39. The said Bill of Exchange was dishonoured by non-payment, which was due on 29th April, 1987. The Plaintiffs accordingly, called upon the Defendants by letter dated 15th March, 1989 to pay the stated Bill of Exchange. Inspite of such demand, the Defendants did not repay the amount due and payable under the said bill. Outstanding amount, which was payable by the Defendants in relation to the said Bills of Exchange at the time of institution of the Suit appearing at the foot of the account is Rs.1,88.000.57/-. The Plaintiffs have accordingly prayed for following relief by filing present suit.

> "The Plaintiffs, therefore, pray:
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> that the Defendants be ordered and decreed to pay to the Plaintiffs a sum of Rs.1,88,000.57 as per the particulars of Claim Exhibit "E" to the Plaint with further interest on Rs.1,45,351.39 at the rate of 18% per annum from the date of the suit till payment or realisation and costs of the suit."

3. The Suit has been filed under Order 37 Rule 2 of the CPC. The Plaintiffs had taken out Summons for Judgment, which appears to have been disposed of by Order dated 22nd March, 1993, whereunder the

Defendants were granted conditional leave to defend. The Defendants were required to deposit sum of Rs.1,30,000/-. Even that direction has not been complied by the Defendants.

4. As mentioned earlier, no written statement has been filed on behalf of the Defendants. No one appears on behalf of the defendants, though duly served. On the other hand, the Plaintiffs have produced original documents the Bills of Exchange dated 28th February, 1987, which indicates that the Defendants being accepted thereto were liable to pay sum of Rs.1,88,000.57/- within 60 days after the execution of the said Bills of Exchange. Significantly, the rate of interest has not been specified in the said Bills of Exchange. Instead, it is left blank. It is the case of the Plaintiffs that the Defendants would be liable to pay interest at the rate of 18% in terms of the legal notice given on 16th March, 1990. I shall consider that contention a little later. In addition to the above said documents, the plaintiffs have also produced original Notarial Certificate dated 2nd February, 1990 as well as office copy of the legal notice sent to the Defendants on 16th March, 1990. The Documents on record as well as uncontroverted averments made in

the plaint persuade me to take the view that the Defendants are liable to pay principal sum of Rs.1,45,351.39, which become due and payable from 60 days after 28th February, 1987 alongwith the interest at the rate of 6% p.a.. Although the Plaintiffs have claimed rate of interest at the rate of 18% per annum, I am inclined to accept the Plaintiffs' stand that the Plaintiffs would be entitled to 6% interest on the principal amount with effect from 1st April, 1989 to 27th March, 1989.

5. However, in so far as further interest is concerned, after institution of the Suit as the transaction in question is indisputedly commercial transaction and the Defendants inspite of the opportunity given by this Court to deposit the amount in terms of the Order dated 22nd March, 1993 has failed to comply with the direction, in the interest of justice, the Plaintiffs are entitled to interest at the rate of 12% per annum. The argument of the Plaintiffs that the Plaintiffs be given interest at the rate of 18% per annum as the amount has been indicated in the legal notice, does not commend to me. In the fact of the present case, it is not possible to take the view that the agreed rate of interest was 18% per annum. In fact, the Bills of

Exchange leaves interest description blank.In other words, there is no agreed rate of interest between the parties.In fact, the Plaintiffs themselves have claimed interest at the rate of only 6% per annum for the default period till the institution of the Suit. Thus understood, in my opinion, interest of justice would be met, if the Plaintiffs are awarded interest at the rate of 12% per annum.

6. For the reasons already indicated earlier, the Suit ought to succeed. The same is disposed of by following order.

(i) The suit is decreed by ordering the Defendants to pay to the Plaintiffs sum of Rs.1,88,000.57 alongwith interest at the rate of 12% per annum on Rs.1,45,351.39 from the date of institution of the suit till its realisation.

(ii) Plaintiffs are also entitled for costs.

(iii) Decree be drawn be accordingly.

(iv) Refund as per rule.

**(A.M.KHANWILKAR,J)**